IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 4-3-2002

Coram:

THE HONOURABLE MR. JUSTICE M. KARPAGAVINAYAGAM

C.R.P. No.1897 of 1996 and C.M.P.No.10433 of 1996

M.S.Karuppusami .. Petitioner

Vs.

1. Saravana Devei @ Vasanthamani
2. Manickam
3. Dhanamani
4. Chithambaram
5. Subulakshmi
6. Balasubramaniam .. Respondents

Civil Revision Petition against the Order dated 17.4.1996 in I.A.No.574 of 1995 in O.S.No.322 of 1992 on the file of the District Munsif, Gobichettipalayam.

!For Petitioner : Mr.M.M.Sundresh

^For Respondents: Mr.M.Duraiswamy

: ORDER

Seeking to set aside the order refusing to amend the plaint by dismissing the petition for amendment, the petitioner/plaintiff has approached this Court in this Civil Revision Petition.

2. According to the petitioner/plaintiff, he filed a suit for permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit properties. Since the defendants 1 and 2 failed to vacate the house, which is one of the suit properties in spite of his request, he filed an application in I.A.No.574 of 1995 to amend the plaint so as to get the relief of mandatory injunction and possession of the said house with damages.

3. According to the respondents/defendants, the said application was not maintainable, since the amendment sought for requesting for mandatory injunction would create a new cause of action, which is quite contradictory to the cause of action mentioned in the original plaint.

4. Agreeing with the contention of the respondents/defendants,

the trial Court dismissed the said application and hence, this Civil Revision Petition.

5. I heard the learned counsel for the petitioner and the respondents.

6. On going through the records and the impugned order, I am unable to find any substance in the contention urged by the learned counsel for the petitioner challenging the impugned order.

7. The petitioner/plaintiff, the father of the first defendant, filed a suit in O.S.No.322 of 1992 seeking the relief of permanent injunction against the defendants contending that he is in possession of the suit properties and on 24.5.1992, the defendants joined together and tried to interfere with his possession. Pending suit, he filed an application for interim injunction and the same was dismissed. The said order was challenged in appeal and the lower appellate Court also confirmed the said order of the trial Court declining to grant injunction in favour of the petitioner/plaintiff.

8. In the year 1995, the petitioner/plaintiff filed an application in I.A.No.574 of 1996 requesting to amend the plaint contending that in respect of the garden house in lot No.2 of Item No.1, the defendants 1 and 2 were allowed to reside in the said house as licensee and the said licence was revoked on 1.5.1992 and despite that, the defendants 1 and 2 did not vacate the house and handed over possession of the same to him and therefore, he sought a mandatory injunction directing the defendants 1 and 2 for delivery of possession of the said property and for damages.

9. So, the reading of the plaint, which has been filed in the year 1 992 and the amendment petition which has been filed in the year 1995, that too, after the dismissal of the injunction application would clearly show that through this amendment application, the plaintiff wants to introduce a new case creating a new cause of action.

10. It may be true, as laid down in RAGU THILAK D. JOHN v. S. RAYAPPAN AND OTHERS (2001 (2) S.C.C. 472), as pointed out by the learned counsel for the petitioner, that the power to allow the amendment is wide and the Courts should not adopt a hyper technical approach. These observations have been made by the Supreme Court only in view of the subsequent development took place after the filing of the suit.

11. But, in this case, it is the case of the plaintiff that while the suit was filed, the plaintiff was in possession of the suit properties and there was a disturbance to his possession on 24.5.1992. But when the application for amendment was filed after 3 years, he sought to introduce a new case, that in the garden house, the defendants 1 and 2 were permitted to reside as a licencee and the said licence was revoked on 1.5.1992. Therefore, the cause of action in relation to the incident which took place prior to the filing of the suit is found place in the

amendment application. Furthermore, the cause of action in the plaint and the amendment application is completely contradictory and the application for amendment was sought to be filed only after he lost the battle in the injunction application.

12. It is settled law that the pleading could only be amended if it is to substantiate the pre-existing facts already contained in the original pleadings. Under the guise of amendment a new cause or a case cannot be substituted. The Courts cannot be asked to adjudicate the entirely different case instead of the original case. Though it is expedient under certain circumstances to take into consideration the supervening facts in the course of a litigation, it would be hazardous to accept such an application for amendment of the plaint for introducing a new cause of action which was never thought of earlier and which is diametrically opposite to that stated in the original plaint.

13. Therefore, Order 6 Rule 17 C.P.C. would not permit such an amendment as it would result prejudice to the other party, who was contesting the case from the beginning, as laid down by the Full Bench of this Court reported in AIR 1978 MADRAS 285 (KUMARASWAMI v. D.R. NANJAPPA).

14. Under those circumstances, I do not find any merit in this Civil Revision Petition and accordingly, the same is dismissed. Consequently, C.M.P.No.10433 of 1996 is closed. There is no order as to costs.

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Index: Yes (I)
dpp

To
The District Munsif, Gobichettipalayam.

M. KARPAGAVINAYAGAM, J.
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